

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :	Dotan <i>et al.</i>	CONFIRMATION No. :	7497
SERIAL NUMBER :	10/728,227	EXAMINER :	James Leslie Grun
FILING DATE :	December 3, 2003	ART UNIT :	1641
FOR :	METHOD FOR DIAGNOSING DISEASES BASED ON LEVELS OF ANTI-GLYCAN ANTIBODIES		

Mail Stop: Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705(b)

Applicants request reconsideration of patent term adjustment for the above-referenced application. Also enclosed is the two-hundred dollar fee as required by 37 C.F.R. § 1.18(e).

Applicants received a Notice of Allowance and Fees Due from the U.S. Patent and Trademark Office, mailed on March 31, 2009, which stated that the Patent Term Adjustment under 35 U.S.C. 154(b) to date is 412 days. By this paper, Applicants hereby petition the U.S. Patent and Trademark Office for reconsideration of the patent term adjustment calculation to **815 days**, based on the facts provided herein. This Request is submitted in view of the decision by the U.S. District Court decision in *Wyeth v. Dudas* (D.D.C. 2008) on September 30, 2008.

This patent application was filed on December 3, 2003, and is therefore subject to the patent term adjustment procedures set forth in 37 C.F.R. §§ 1.702 to 1.705 for applications filed on or after May 29, 2000.

On March 18, 2004, the Office mailed a Notice to File Missing Parts of Non-Provisional Application.

On June 18, 2004, Applicants filed a Response to the Notice to File Missing Parts. This response was received by the Office within three-months of the mailing date of the action.

On September 22, 2006, the Office mailed a Restriction/Election-of-Species. The action was mailed 596 days after the fourteen month requirement for mailing of the first action after the

date on which the application was filed under 35 U.S.C. §111(a). As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 596 day Office delay.

On October 20, 2006, Applicants filed a Response to Election-of-Species/Restriction. This response was received by the Office within three-months of the mailing date of the action.

On January 5, 2007, the Office mailed a Non-Final Office Action.

On April 5, 2007, Applicants filed a Response to the Non-Final Office Action. This response was received by the Office within three-months of the mailing date of the action.

On July 11, 2007, the Office mailed a Final Office Action.

On January 11, 2008, Applicants filed a Request for Continued Examination with a Petition for a three-month extension of time. This response was filed 92 days after the date that is three months after the mailing date of the Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 92 day Applicant delay.

On March 5, 2008, the Office mailed a Non-Final Office Action.

On September 5, 2008, Applicants filed a Response to the Non-Final Office Action with a Petition for a three-month extension of time. This response was filed 92 days after the date that is three months after the mailing date of the Final Office Action. As shown in Exhibit A, the number of days of Patent Term Adjustment accounts for the 92 day Applicant delay.

On December 23, 2008, the Office mailed a Non-Final Office Action.

On March 18, 2009, Applicants filed a Response to the Non-Final Office Action. This response was received by the Office within three-months of the mailing date of the action.

On March 31, 2009, the Office mailed the Notice of Allowance /Notice of Allowability, and the Determination of Patent Term Adjustment for this application. The Determination of Patent Term Adjustment noted an adjustment period for this patent application of 412 days. As indicated in Exhibit A, the Office delay for this application is indicated as 596 days and Applicants' delay is 184 days.

According to the provisions of 37 C.F.R. §1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years after the date on which the application was filed. Under 37 C.F.R. §1.702(b)(1)-(5), Applicants are entitled to this adjustment for any time other than any time consumed by continued examination of the application requested by the applicant under section 132(b), beginning on the date on which a

Request for Continued Examination was filed, January 11, 2008, and ending on the date the patent issues.

The amount of the Adjustment under 37 C.F.R. §1.702(b) is calculated from December 4, 2006 (*i.e.*, the day after the date that is three years from the date that the application was filed), through and including January 10, 2008, the day before the date the Request for Continued Examination was filed on January 11, 2008, subtracting only time legitimately attributable to applicant delay. Applicants submit that the Adjustment under 37 C.F.R. §1.702(b) is 403 days.

Applicants have calculated the Patent Term Adjustment based on 37 C.F.R. 1.702(a), 37 C.F.R. 1.702(b) and 37 C.F.R. 1.704 through the payment of the Issue Fee submitted herewith. Applicants submit that an additional 403 days of Office delay should be included, under 37 C.F.R. 1.702(b), in calculating the total Patent Term Adjustment. Accordingly, the total calculation of Patent Term Adjustment is as follows: Office delay under 37 CFR 1.702(a) is 596 days; Office Delay under 37 CFR 1.702(b) is 403 days; and Applicant delay under 37 CFR 1.704(c) is: $92+92=184$ days; adjustment: $(596+403-184)=815$ days.

Applicants respectfully request that the Patent Term Adjustment be increased from 412 days, as reported on the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b), to **815 days**.

Applicants reserve the right to request any further patent term adjustment based on the actual issue date of the instant application.

In addition to the foregoing, a Terminal Disclaimer was filed on September 5, 2008 directed to USSN 10/843,033, USSN 11/351,185 and USSN 11/364,964.

U.S.S.N.: 10/728,227
Applicant: Dotan *et al.*

If the Office would like to discuss any aspect of this filing, the Office representative assigned to process this request is welcome to call the undersigned attorneys. No additional fees are believed to be due by submission of this paper. However, the Office is authorized to charge such fee, or credit any overpayment in fees to Deposit Account No. **50-0311**, Customer Number **30623**, Attorney Docket No. 25681-502 P.

Respectfully submitted,



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Date: June 30, 2009

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10/728,227	METHOD FOR DIAGNOSING DISEASES BASED ON LEVELS OF ANTI-GLYCAN ANTIBODIES	06-26-2009::12:33:13
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/728,227

Filing or 371(c) Date:	12-03-2003	USPTO Delay (PTO) Delay (days):	596
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	184
Post-Issue Petitions (days):	+0	Total PTA (days):	412
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
03-31-2009	Mail Notice of Allowance		
03-27-2009	Document Verification		
03-27-2009	Notice of Allowance Data Verification Completed		
03-27-2009	Case Docketed to Examiner in GAU		
03-26-2009	Examiner's Amendment Communication		
03-23-2009	Examiner Interview Summary Record (PTOL - 413)		
03-25-2009	Date Forwarded to Examiner		
03-18-2009	Response after Non-Final Action		
03-18-2009	Mail Examiner Interview Summary (PTOL - 413)		
03-12-2009	Examiner Interview Summary Record (PTOL - 413)		
12-23-2008	Mail Non-Final Rejection		
12-22-2008	Non-Final Rejection		
10-22-2008	Paralegal TD Accepted		
09-05-2008	Terminal Disclaimer Filed		
09-05-2008	Miscellaneous Incoming Letter		
10-17-2008	Date Forwarded to Examiner		
09-05-2008	Response after Non-Final Action		92
09-05-2008	Request for Extension of Time - Granted		⬆
07-09-2008	Mail Examiner Interview Summary (PTOL - 413)		⬆
06-26-2008	Examiner Interview Summary Record (PTOL - 413)		⬆
03-05-2008	Mail Non-Final Rejection		⬆
02-28-2008	Non-Final Rejection		
01-11-2008	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		
01-29-2008	Date Forwarded to Examiner		
01-29-2008	Date Forwarded to Examiner		
01-11-2008	Request for Continued Examination (RCE)		92
01-29-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		⬆
01-11-2008	Request for Extension of Time - Granted		⬆
01-11-2008	Workflow - Request for RCE - Begin		⬆
07-11-2007	Mail Final Rejection (PTOL - 326)		⬆

07-09-2007	Final Rejection	
04-29-2007	Date Forwarded to Examiner	
04-05-2007	Response after Non-Final Action	
01-05-2007	Mail Non-Final Rejection	
12-29-2006	Non-Final Rejection	
10-04-2005	Information Disclosure Statement considered	
03-17-2006	Information Disclosure Statement considered	
11-01-2006	Date Forwarded to Examiner	
10-20-2006	Response to Election / Restriction Filed	
09-22-2006	Mail Restriction Requirement	596
09-18-2006	Requirement for Restriction / Election	⬆
03-17-2006	Reference capture on IDS	⬆
03-17-2006	Information Disclosure Statement (IDS) Filed	⬆
03-17-2006	Information Disclosure Statement (IDS) Filed	⬆
10-04-2005	Reference capture on IDS	⬆
10-04-2005	Information Disclosure Statement (IDS) Filed	⬆
10-04-2005	Information Disclosure Statement (IDS) Filed	⬆
09-27-2004	IFW TSS Processing by Tech Center Complete	⬆
09-27-2004	Case Docketed to Examiner in GAU	⬆
06-18-2004	New or Additional Drawing Filed	⬆
06-18-2004	Preliminary Amendment	⬆
07-13-2004	Application Return from OIPE	⬆
07-13-2004	Application Return TO OIPE	⬆
07-13-2004	Application Dispatched from OIPE	⬆
07-13-2004	Application Is Now Complete	⬆
06-18-2004	Additional Application Filing Fees	⬆
06-18-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	⬆
06-18-2004	Applicant has submitted new drawings to correct Corrected Papers problems	⬆
03-18-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	⬆
03-01-2004	Cleared by L&R (LARS)	⬆
02-11-2004	Referred to Level 2 (LARS) by OIPE CSR	⬆
12-28-2003	IFW Scan & PACR Auto Security Review	⬆
12-03-2003	Initial Exam Team nn	⬆

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